

225.7017

shall include the use of fire-resistant rayon fiber. However, this does not preclude issuing a solicitation that allows offerors to propose the use of fire-resistant rayon fiber.

[76 FR 71833, Nov. 18, 2011]

225.7017 Utilization of domestic photovoltaic devices.

225.7017-1 Definitions.

As used in this section—

Covered contract means an energy savings performance contract, a utility service contract, or a private housing contract awarded by DoD, if such contract results in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products. DoD is deemed to own a photovoltaic device if the device is—

(1) Installed on DoD property or in a facility owned by DoD; and

(2) Reserved for the exclusive use of DoD for the full economic life of the device.

Designated country photovoltaic device, domestic photovoltaic device, foreign photovoltaic device, Free Trade Agreement country photovoltaic device, photovoltaic device, qualifying country photovoltaic device, and U.S.-made photovoltaic device are defined in the clause at 252.225-7017, Photovoltaic Devices.

[76 FR 78860, Dec. 20, 2011]

225.7017-2 Restriction.

In accordance with section 846 of the National Defense Authorization Act for Fiscal Year 2011, photovoltaic devices provided under any covered contract shall comply with 41 U.S.C. chapter 83, Buy American, subject to the exceptions to that statute provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*) or otherwise provided by law.

[76 FR 78860, Dec. 20, 2011]

225.7017-3 Exceptions.

DoD requires the contractor to utilize domestic photovoltaic devices in covered contracts, with the following exceptions:

(a) *Qualifying country.* Qualifying country photovoltaic devices may be utilized in any covered contract, because 225.103(a)(i)(A) provides an excep-

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tion to the Buy American statute for products of qualifying countries, as defined in 225.003.

(b) *Buy American—unreasonable cost.* For a covered contract that utilizes photovoltaic devices valued at less than \$202,000, the exception for unreasonable cost may apply (see FAR 25.103(c)). If the cost of a foreign photovoltaic device plus 50 percent is less than the cost of a domestic photovoltaic device, then the foreign photovoltaic device may be utilized.

(c) *Trade agreements.* (1) *Free Trade Agreements.* For a covered contract that utilizes photovoltaic devices valued at \$25,000 or more, photovoltaic devices may be utilized from a country covered under the acquisition by a Free Trade Agreement, depending upon dollar threshold (see FAR subpart 25.4).

(2) *World Trade Organization—Government Procurement Agreement.* For covered contracts that utilize photovoltaic devices valued at less than \$202,000 or more, only U.S.-made photovoltaic devices, designated country photovoltaic devices, or qualifying country photovoltaic devices may be utilized.

[76 FR 78860, Dec. 20, 2011, as amended at 77 FR 13013, Mar. 5, 2012; 77 FR 30369, May 22, 2012; 77 FR 35880, June 15, 2012]

225.7017-4 Solicitation provisions and contract clauses.

(a)(1) Use the clause at 252.225-7017, Photovoltaic Devices, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a contract that—

(i) Is expected to exceed the simplified acquisition threshold; and

(ii) May be a covered contract, *i.e.*, an energy savings performance contract, a utility service contract, or a private housing contract awarded by DoD, if such contract results in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products.

(2) Use the clause in the resultant contract, including contracts using FAR part 12 procedures for the acquisition of commercial items, if it is a covered contract (*i.e.*, will result in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products).